IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

OP.No. 29358 of 2001(T)

PETITIONER:

SAFIA BEEGUM, W/O. LATE P.A.JALALUDEEN,
RESIDING AT KOTTALAPATTUKIZHAKKETHIL HOUSE,
PATHIYOOR WEST, KAREELAKULANGARA.P.O., KAYAMKULAM.

BY ADV. SRI.R.RAJASEKHARAN PILLAI
SRI.GEORGE T. THACHETT

RESPONDENTS:
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1. UNION OF INDIA REPRESENTED BY THE SECRETARY, MINISTRY OF DEFENCE, NEW DELHI.

2. THE CHIEF OF ARMY STAFF, SENA BHAVAN, NEW DELHI.

3. THE RECORD OFFICER, DEFENCE SECURITY CORPS.(RECORDS), MILL ROAD, CANNANOOR.

4. THE SAINIK WELFARE OFFICER, ZILLA SAINIK WELFARE OFFICE, ALAPPUZHA.

BY ADV. SRI.JAYAPRADEEP. V., ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO. 29358/2001

ORDER ON CMP NO. 47658/2001 IN OP NO. 29358/2001

DISMISSED.

13/07/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE CERTIFICATE SHOWING THE STATUS OF THE PETITIONER DATED 24/12/1996 ISSUED BY THE KURUNGAD MUSLIM JAMA-ATH.

P2 : COPY OF THE LETTER NO.PEN/FP4/1130779/103 DATED 25/01/1997 ISSUED BY THE 3RD RESPONDENT.

P3 : COPY OF THE LETTER SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 12/11/1997.

P4 : COPY OF THE LETTER NO.PEN/FP4/1130779/334/107 DATED 21/05/1998 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT.

P5 : COPY OF THE LETTER NO.PEN/FP4/1130779/344/110 ISSUED BY THE 3RD RESPONDENT DATED 11/02/1999 TO THE 4TH RESPONDENT.

P6 : COPY OF THE LETTER NO. PEN/FP4/1130779/113 DATED 20/04/2001 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT.

P7 : COPY OF THE LETTER NO. PEN/FP4/1130779/114 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT DATED 13/07/2001.

RESPONDENT'S EXHIBITS

R3(a) : COPY OF THE LETTER DATED 02/06/1991.

R3(b) : COPY OF THE PAGE NO. 13 OF THE ARTILLERY SERVICE SHEET ROLL.

R3(c) : COPY OF THE RELEVANT PAGE OF IAFF 958-A.

R3(d) : COPY OF THE NOMINATION FOR SPECIAL FAMILY PENSION.

// TRUE COPY //

PA TO JUDGE.

jg

C.R.

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 29358 of 2001

Dated, this the 13th day of July, 2007

J U D G M E N T

Heard learned counsel for petitioner and learned Standing Counsel appearing for respondents.

2. The prayer in the original petition is for a direction to the respondents to grant family pension to the petitioner, which, according to her, she is eligible after the death of her husband Shri. P.A.Jalaludeen, who was an Ex-Naik in the Indian Army. The said Mr. Jalaludeen died on 01/09/1996. The respondents have declined family pension to the petitioner for the reason that, as per the record petitioner was divorced from her husband on 26/05/1966. The last communication issued to the petitioner is Ext.P6 on 20/04/2001.

3. The only question to be considered is whether petitioner was divorced from her husband as claimed by the respondents, and if so, whether she is not entitled to family pension. The original service records pertaining to service of petitioner's husband is admittedly not available with the respondents. However, they have

reconstructed the file and from records, it is seen that petitioner's husband gave declaration before the respondents that he was granted divorce by the Court of "Judicial Chief First Class Magistrate", Alappuzha from 26/05/1966 onwards. Petitioner's case is that the proceedings before the Magistrate was only a maintenance petition. No divorce decree or order was produced by the deceased while he was in service and Judicial Magistrate has no authority under the statute to grant divorce. Therefore the declaration by petitioner's husband that he got divorce from the court is not substantiated with any document before the Department. The deceased had four children in the petitioner is an admitted fact, whose pension she is claiming after the death under the Family Pension Scheme. The deceased himself had stated that he was living with one of his children. There is no case even for the respondents that a divorce according to religious rites are carried out. In the absence of any documents or materials to prove the divorce, at the maximum, this could be a case of the deceased just living separately from his wife during latter part of his life after he got four children. Even the statement given by him about the divorce relied on by the Department is also unreliable because the

Court, namely, Court of Judicial Chief First Class Magistrate has no authority under law to grant divorce. In the circumstance, the only inference possible is subsistence of marriage at the time of death of petitioner's husband, Mr. Jalaludeen. Original petition is accordingly allowed vacating Ext.P6 order of respondents declining family pension to the petitioner. There will be a direction to the 1st and 3rd respondents, whoever is the authority to grant family pension to the petitioner from the date of entitlement after the death of her husband Mr. Jalaludeen. However, arrears should be paid to the petitioner with interest within a period of three months from the date of production of a copy of this judgment. Thereafter family pension should be disbursed to the petitioner on regular basis.

(C.N.RAMACHANDRAN NAIR, JUDGE)

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